

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)	
MEASURABLE COST SAVINGS)	
DETERMINED BY DIRIGO)	ORDERS ON
HEALTH FOR THE SECOND)	INTERVENTION
ASSESSMENT YEAR)	AND PROCEDURES
)	
Docket No. INS-06-900)	

The Superintendent issues this order on the various applications for intervention filed in the above-captioned proceeding, together with establishing further procedures for this proceeding.

INTERVENTION ORDER

Applications for intervention were filed on June 9, 2006, by the Maine Automobile Dealers Association Insurance Trust and on June 12, 2006, by the Maine Association of Health Plans, Anthem Health Plans of Maine, Inc. d/b/a/ Anthem Blue Cross and Blue Shield, the Maine State Chamber of Commerce, and Consumers for Affordable Health Care

Maine Automobile Dealers Association Insurance Trust ("Auto Dealers Insurance Trust" or "Auto Dealers"). The Auto Dealers Insurance Trust explains that it is a multiple employer welfare arrangement (MEWA) that secures health insurance for approximately 3,200 employee participants and 5,800 insurable lives. The Auto Dealers assert that they employ a third-party administrator (TPA) to manage and administer their health insurance programs. Under 24-A M.R.S.A. §§ 6913(2) and 6913(3), TPAs are subject to savings offset payments that could result from an approval in this proceeding of Dirigo Health's determination of aggregate measurable cost savings. The Auto Dealers further assert that any such savings offset payments will be passed on by the TPA to the Auto Dealers and, therefore, that the Auto Dealers, its members, and their participants will incur higher health insurance costs thereby making them substantially and directly affected by this proceeding. No timely statement in opposition was filed to the Auto Dealers' intervention application.

The Maine Association of Health Plans (the "Association of Health Plans" or "Association"). The Association of Health Plans explains that it is an incorporated association of health plans whose members are entities licensed by the Superintendent, including health insurers, health maintenance organizations, and third-party administrators.¹ The Association asserts that pursuant to 24-A M.R.S.A. §§ 6913(2), 6913(3), and 6915 each of its members is required to pay savings offset payments which may be approved in this proceeding. The Association further asserts that the imposition of the assessment of the savings offset payment on paid claims of customers of the Association's member companies will necessitate an increase in prices charged by the Association's members to customers and potential customers and may result in loss of business due to such an increase. The Association concludes that each of its

¹ The Association identifies in its application as one of its members Anthem Blue Cross and Blue Shield of Maine.

members is substantially and directly affected by the proceeding. No timely statement in opposition was filed to the Association of Health Plans' intervention application.

Anthem Health Plans of Maine, Inc. d/b/a/ Anthem Blue Cross and Blue Shield ("Anthem BCBS"). Anthem BCBS explains that it is the State's largest health insurance carrier as well as the current administrator of the DirigoChoice program. It asserts that the savings offset payment under review in this proceeding must be paid in the first instance by, among others, health insurance carriers. It further asserts that Anthem BCBS member premium rates will be impacted by the amount of the savings offset payment as it is used in calculating Anthem BCBS member rates. Finally, Anthem BCBS asserts that it is one of the State's largest employers and will bear the burden of paying the savings offset payment in its own premium rates for its employee group. Anthem BCBS concludes that it has a substantial and direct interest in the proceeding. No timely statement in opposition was filed to Anthem BCBS's intervention application.

Maine State Chamber of Commerce (the "Chamber"). The Chamber explains that it is a statewide business association representing large and small Maine businesses. Its members include businesses that provide health coverage for their employees through self-funded plans and insured plans, and the Chamber itself has an insured plan for its own employees. The Chamber asserts that the savings offset payment determined by the Superintendent will result in an assessment made against health insurance carriers, employee benefit excess insurance carriers, and third party administrators that will have a tremendous impact on Maine's business community because every employer in Maine that provides health care coverage to its employees (whether self-funded or insured) will be affected. Although the savings offset payment will be paid directly by health insurance carriers, third party administrators, and employee excess benefit insurance carriers, the Chamber further asserts that it is Maine employers and their employees that will ultimately pay the savings offset payment because carriers will have the ability to pass the savings offset payment on to employers in their premium rates and third party administrators will have the ability to pass the assessment on to self-funded plans directly. The Chamber concludes that it has a substantial and direct interest in the proceeding. No timely statement in opposition was filed to the Chamber's intervention application.

Consumers for Affordable Health Care ("CAHC"). CAHC explains that it is the State's largest consumer health coalition whose mission is to advocate for affordable, quality health care with a membership of over 100 members, including 35 businesses and organizations, with a collective membership representing the health care and coverage interests of over 200,000 Maine citizens. CAHC asserts that its members include (i) purchasers of health insurance coverage, including DirigoChoice, and (ii) insured and underinsured individuals and small businesses, and publicly insured individuals and families, in need of affordable coverage under DirigoChoice; and that these members' health insurance rates, subsidies, and/or coverage may be affected by this proceeding. No timely statement in opposition was filed to CAHC's intervention application.

ORDER

The separate applications for intervention of the Maine Automobile Dealers Association Insurance Trust, the Maine Association of Health Plans, Anthem Health Plans of Maine, Inc. d/b/a/ Anthem Blue Cross and Blue Shield, the Maine State Chamber of Commerce,

and Consumers for Affordable Health Care are GRANTED as of right under 5 M.R.S.A. § 9054(1).

As parties to the proceeding, the intervenors shall be bound by all procedural requirements set forth in Title 24-A of the Maine Revised Statutes, Bureau of Insurance Rule Ch. 350, and all procedural orders issued by the Superintendent during the course of this proceeding.

PROCEDURAL ORDER

Maine Insurance Rule Chapter 350(3)(A) provides that the Superintendent may, where good cause appears, deviate from the provisions of Rule 350 insofar as he finds compliance therewith to be impracticable, inexpedient, or unnecessary. The Superintendent anticipates that this proceeding will involve unique issues, involve multiple parties, and will require stringent procedures for the issuance of a decision by the statutory deadline of July 21, 2006. Thus, the Superintendent determines that good cause appears to set out in detail the procedures to be applied in this proceeding.

In addition to the procedures set forth in this Order, this proceeding will be conducted pursuant to the Maine Administrative Procedure Act, 5 M.R.S.A. Chapter 375, subchapter 4, and 24-A M.R.S.A. §§ 229 to 236. Maine Insurance Rule Chapter 350 shall also apply to the extent not inconsistent with this Order.

Unless and until otherwise ordered, the provisions of Insurance Rule Chapter 350, § 5 shall govern the computation of any period of time prescribed by the Superintendent in this proceeding. For purposes of complying with filing deadlines, the Superintendent will accept official documents filed by electronic mail, but will not accept any such documents filed by facsimile transmission. Unless otherwise ordered by the Superintendent, all documents due to be filed by a date certain must be filed no later than 3:00 p.m. of the due date. Filings made after that time will be considered filed late and will be date stamped as having been received the next day.

I. SCHEDULE OF PROCEEDING

The schedule of the proceeding is set forth below, consistent with the dates established in the April 26, 2006, Notice of Pending Proceeding and Hearing. All persons are advised that this schedule is subject to change and prospectively should verify the current schedule as necessary.

<u>Item</u>	<u>Date / Deadline</u>
Dirigo Filing	June 9, 2006
Intervention Deadline	June 13, 2006
Opposition to Intervention	Rolling dates. June 14, 2006 (Final Date)
Motions for Leave to Serve Limited Informational Requests or to Present Additional Evidence	June 19, 2006

Opposition to Motions for Leave to Serve Limited Informational Requests or to Present Additional Evidence	June 21, 2006
Party Notice to Dirigo Regarding Completeness of the Record ²	June 22, 2006
Intervenor Briefs	June 23, 2006
Dirigo Brief	June 30, 2006
Intervenor Reply Briefs	July 5, 2006
Public Hearing	July 12, 2006
Superintendent's Decision	July 21, 2006

II. SERVICE OF DOCUMENTS

A. Where to File

All filings and other correspondence relating to this proceeding should be either hand delivered to the Superintendent, during business hours, at the offices of the Bureau of Insurance, 124 Northern Avenue, Gardiner, Maine, or mailed to the Superintendent at the following address:

Alessandro A. Iuppa, Superintendent
Attn.: Vanessa J. Leon, Docket No. INS-06-900
 Bureau of Insurance
 Maine Department of Professional and Financial Regulation
 #34 State House Station
 Augusta, Maine 04333-0034

² See Hearing Notice, section IV(B), p. 4: "If any intervenor party believes that the record filed by Dirigo is incomplete or over inclusive, that party shall notify Dirigo within seven (7) days after being granted intervenor status. This notice shall include specific proposals by the intervenor party regarding additions to or deletions from the record filed by Dirigo. The parties shall attempt to agree on the contents of the record. If the parties cannot agree, the intervenor party may request that the Superintendent modify the contents of the record."

B. Method of Filing

All documents filed by parties in this proceeding must meet the following criteria:

1. Hard Copies:

(a) Two (2) hard copies must be filed with the Superintendent of Insurance;

(b) One (1) hard copy must be filed with the Superintendent's consultant at the following address:

Compass Health Analytics, Inc.
Attn: John Kelly
465 Congress Street, 7th Floor
Portland, Maine 04101

(c) One (1) hard copy must be filed with the Superintendent's legal counsel at the following address:

Thomas C. Sturtevant, Jr.
Assistant Attorney General
Office of the Attorney General
#6 State House Station
Augusta, Maine 04333-0006

and

(d) One (1) hard copy must be served on all parties to the proceeding; provided, however, that any party may, by agreement with another party, choose to be served solely via e-mail in lieu of hard copy delivery.

2. Electronic Copies:

One (1) identical electronic copy of the document must be filed with the Superintendent and his consultant and counsel via e-mail sent to the following addresses:

Vanessa.J.Leon@maine.gov;

Tom.Sturtevant@maine.gov; and

jck@compass-inc.com.

C. Service on Other Parties

A service list will be established by the Superintendent and provided to all parties. Each party is to provide the Superintendent immediately with the name, address, telephone number, FAX number, and e-mail address of one person upon whom service for that party is to be made.

Service on parties shall be made electronically, with hard copy promptly posted for mail delivery. If service is made on a party both electronically and by hard copy, the document shall be considered received on the earliest date of receipt and the time to respond shall be calculated using the date the document is first received. Unless otherwise ordered by the Superintendent, all documents due to be filed and served by a date certain must be delivered no later than 3:00 p.m. of the due date. The service of all other documents where there is no service or filing deadline also shall be made by 3 p.m. Unless otherwise ordered by the Superintendent, service after 3 p.m. will be considered as having been made on the following business day.

Each party must include a certification of service on other parties as part of any filing or submission made to the Superintendent. Service on other parties shall be simultaneous with filing with the Superintendent (*i.e.*, delivered to the party for receipt on the same day as delivery is made on the Superintendent). Neither the Superintendent nor Bureau of Insurance staff will be responsible for providing copies of filings or other documents to the service list. If a party fails to serve all other parties on the designated service list, the filing will not be accepted by the Superintendent until proof of service on all parties is provided.

III. FORMAT OF FILING

All documents created electronically must be served and filed in a printable format which does not convert text to graphics and does not convert formulas to values, subject to the right to request an appropriate protective order if one or more formulas are *bona fide* trade secrets. Format shall either be the format in which the document was created, an equivalent Microsoft Office format, or PDF if the document is not a spreadsheet. Non-substantive graphic content (*i.e.*, logos and facsimile signatures) are discouraged if they materially increase the file size, especially if it adds more than 25 KB to the file size.

All documents filed by parties to the proceeding shall be appropriately captioned following the caption format at the top of the first page of this Order, specifically including the Docket Number assigned by the Superintendent to the proceeding, INS-06-900.

All filings made by parties in this proceeding must include a table of contents only if more than one document is contained within the filing, or if one document contains multiple sections. In addition, all documents filed by parties must include a separate cover sheet that includes all of the information set forth below:

1. Date filed;
2. Name of party;
3. Document title;
4. Document type (brief, motion, etc.);
5. A notation of whether or not any portion of the filing is asserted to be confidential.

All documents filed with the Superintendent by parties to the proceeding must be paginated.

IV. SUBMISSION OF CONFIDENTIAL INFORMATION

A. Submission

All confidential documents or portions of documents for which a party asserts confidentiality must be filed separately. Hard copy filings of documents under claim of confidentiality must be made with red covers. Electronic copy filings of documents must conspicuously identify in the e-mail subject line the claim of confidentiality. All pages of any documents for which confidentiality is asserted must be prominently labeled or stamped as confidential. All submissions properly identified in accordance with this paragraph will be maintained as confidential unless and until the Superintendent rules otherwise.

B. Presumption of Public Access

Under both the Maine Insurance Code and Freedom of Access Act, the Superintendent is required to disclose public records. *See* 24-A M.R.S.A. § 216(2); 1 M.R.S.A. §§ 401, 408(1). The presumption is that citizens have a right of free access to documents filed with the Superintendent. Thus, the public has a right of access to Bureau records unless it is demonstrated that such information meets one of the strictly construed exceptions to disclosure. *See* 1 M.R.S.A. § 402(3)(A)-(M).

C. Memorandum in Support

The party requesting confidentiality must provide the Superintendent with a memorandum of law in support of the request. Except with leave of the Superintendent, the memorandum in support must be submitted with the documents for which confidentiality is requested. The memorandum must clearly identify those documents, or portions of documents, for which confidentiality is requested, the reason for the request, and any supporting legal authority. Specifically, the memorandum of law shall include detailed legal analysis as to why the information is not a public record pursuant to the provisions of the Freedom of Access Act, including identification of which statutory exception protects the information from being made publicly available.

D. Challenges to Confidentiality Assertions

If an assertion of confidentiality is challenged, the party claiming confidentiality will be notified and provided an opportunity to argue in favor of continued protection.

E. Protective Order

All information or documentation for which confidentiality is provided by the Superintendent, and all parties to the proceeding, are subject to the terms of any protective order(s) that the Superintendent may issue.

V. DISCOVERY; EVIDENCE

As stated in the Superintendent's April 26, 2006, Notice of Pending Proceeding and Hearing:

The Dirigo Board is required to conduct an adjudicatory proceeding pursuant to the Maine APA in order to make its determination of aggregate measurable cost savings for the second assessment year. 24-A M.R.S.A. § 6913(1)(A). The record of the Dirigo Proceeding and the filing made by the Dirigo Board with the Superintendent pursuant to 24-A M.R.S.A. § 6913(1)(B) shall constitute the record upon which the Superintendent will conduct his review for reasonableness. 24-A M.R.S.A. § 6913(1)(C). Any discovery conducted or evidence presented must be relevant to the issue of whether the determination of aggregate measurable cost savings made by the Dirigo Board pursuant to 24-A M.R.S.A. § 6913(1)(A) is reasonably supported on the record. *Id.*; *see also* 5 M.R.S.A. §§ 9056(2) and 9057(2), Bureau of Insurance Rule Chapter 350 §§ (3) and (13)(C).

A party may serve limited informational requests or present additional evidence if the Superintendent finds that the new information or additional evidence is relevant to the issue presented in this proceeding and will not cause repetition or unreasonable delay in the proceeding. Any party that intends to request leave to serve limited informational requests or to present additional evidence shall file a written motion with the Superintendent within ten (10) days after the Dirigo filing is made. After this deadline no motions to grant leave to serve informational requests will be entertained by the Superintendent. The moving party shall also file with the motion a detailed statement, in the nature of an offer of proof, of the discovery or evidence requested to be taken and the reason it is relevant to the Superintendent's determination. That statement shall be sufficient to permit the Superintendent to make a proper determination as to whether the service of informational requests or the taking of additional evidence as presented in the motion and offer of proof is appropriate and if so to what extent. If upon receipt of responses to informational requests a party desires to present additional evidence, it shall file a written motion containing the information described above.

Hearing Notice, section IV(E), pp. 4-5.

VI. MOTIONS

Every request or motion for an order or ruling of any kind by the Superintendent shall be in writing, unless made on the record during a hearing to which the request or motion is related. Every request or motion should include or be accompanied by a clear statement of the support for the order or other action sought. The statement supporting the request or motion should also include any arguments with respect to policy or law that have a bearing on the request.

Requests or motions and their supporting papers should be clearly labeled on the first page and in the caption with a title that includes "motion" or "request," a short description of the

action or order requested, and language in the caption sufficient to identify the matter to which the request or motion relates. If legal arguments are advanced, the supporting statement accompanying the motion shall include citations to all supporting authorities relied upon by the moving party.

Any party opposing a request or motion shall file a statement in opposition to the motion or request within four (4) days after receipt of the motion, unless the Superintendent establishes some other period. The Superintendent may rule on any request or motion prior to the expiration of the deadline for filing statements in opposition.

VII. COMMUNICATIONS WITH THE BUREAU

Except as otherwise noted in this section, parties shall not communicate with respect to this proceeding with the Superintendent, Bureau Staff advising the Superintendent in this proceeding, or consultants retained by the Superintendent without notice and opportunity for all parties to be present. Parties may direct questions of a strictly ministerial nature to Vanessa J. Leon, Legal Secretary. Procedural queries should be directed only to Thomas Sturtevant, Assistant Attorney General and counsel to the Superintendent in this proceeding

The Superintendent has hired the consulting firm of Compass Health Analytics, Inc. ("Compass Health") to assist him in this proceeding. Compass Health shall be deemed an agent of the Superintendent and the rules applicable to staff members set forth herein shall apply equally to them.

VIII. INTERESTED PERSONS LIST & INTERNET POSTINGS

The Superintendent is maintaining an interested persons list with respect to this proceeding. Persons on the interested persons list will receive copies of Notices of any Prehearing Conferences and Hearings with respect to this proceeding, but will not receive other pleadings and correspondence except as the Superintendent, in his discretion, may direct. Persons may direct requests to be placed on the interested persons list to Vanessa Leon, Legal Secretary, Maine Bureau of Insurance, 34 State House Station, Augusta, ME 04333-0034. E-mail requests to be placed on the interested persons list should be addressed to Vanessa.J.Leon@maine.gov.

Subject to the Superintendent's discretion, non-confidential documents relating to this proceeding will be made available to the public via the Bureau's webpage at www.maineinsurancereg.org. The Dirigo filing made on June 9, 2006 is a public record. Due to its voluminous 5,300 pages, the Dirigo filing will not be posted to the internet but, instead, is made available for inspection at the Bureau of Insurance's offices in Gardiner, Maine.

IX. FAILURE TO COMPLY WITH RULES AND ORDERS

Should any party or participant violate or disregard any Bureau Rule or Order of the Superintendent, the Superintendent shall have and may exercise the option to impose an appropriate sanction without further notice, including but not limited to denial of any party or


participant request; striking material from the record; or consideration and reduction or elimination of that party's or participant's participation in the proceeding.

X. SPECIAL NEEDS

The Department of Professional and Financial Regulation does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services, or activities. Individuals in need of auxiliary aid or with other special needs for effective communication with respect to any aspect of this proceeding are invited to make their needs and preference known to Vanessa J. Leon, tel. 207-624-8452, sufficiently in advance of the hearing so that appropriate arrangements may be made.

PER ORDER OF THE SUPERINTENDENT

DATED: June 15, 2006



ALESSANDRO A. IUPPA
Superintendent of Insurance